EUREKA CLUB *v.* COMMONWEALTH.

June 21, 1906.

[54 S. E. 470.]

1. Clubs—Misuse of Franchise—Ouster—Statutes—Implied Repeal.—Acts 1897-98, p. 479, c. 443, § 4, providing for judgment of ouster against a corporation chartered as a social club on proof that it was being conducted for the purpose of violating or evading the liquor laws of the state was not impliedly repealed by Act April 16, 1903 (Laws 1902-04, p. 227, c. 148, § 144), making the willful or negligent failure on the part of any corporate club to comply with any of the provisions of the act operate as a forfeiture of its charter, nor by chapter 270, § 51, page 481), declaring that any corporation that shall willfully and habitually misuse any essential corporate function shall forfeit its charter on motion made by the Attorney General, etc., neither of such acts being inconsistent with the act of 1898.

2. Same—Franchise—Forfeiture—Proceedings.—Act Feb. 23, 1898 (Acts 1897-98, p. 479, c. 443), providing for the forfeiture of the franchise of corporate clubs for violation of the liquor law declares that after service of the complaint on such corporation at least 10 days before the hearing of the complaint, the court shall inquire into the truth thereof. Held, that where the complaint in such a cause was served ten days before the hearing it was immaterial that it was not filed or returned to the corporation court or the clerk's office thereof prior to judgment.

VIRGINIA IRON, COAL & COKE CO. *v.* CASH'S ADM'R.

June 21, 1906.

[54 S. E. 472.]

1. Master and Servant—Negligence of Master—Contributory Negligence—Questions for Jury.—In an action for the death of a locomotive engineer, whether his employer was guilty of negligence in furnishing him a defective engine, and whether he was guilty of contributory negligence were questions for the jury.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, §§ 1019, 1089-1132.]

2. Appeal—Review—Verdict.—Where there is evidence tending to support the verdict, it will not be set aside on appeal.

[Ed. Note.—For cases in point, see vol. 3, Cent. Dig. Appeal and Error, §§ 3928-3934.]

SOUTHERN RY. CO. et al. *v.* FORGERY & RICHARDSON.

June 24, 1906.

[54 S. E. 477.]

1. Trial—Instructions—Applicability to Evidence.—Where, in an action against connecting carriers for injuries to a shipment of horses

and mules, it was admitted that from the time the animals were loaded until they were delivered by the initial carrier to its connecting carrier less than 15 hours elapsed, so that such initial carrier was under no obligation to feed and water the animals while transporting them, an instruction submitting to the jury whether such initial carrier was negligent in keeping the animals in the car for a longer period than 28 hours without unloading them for rest, water and food for at least 5 hours, as required by Rev. St. U. S. § 4386 [U. S. Comp. St. 1901, p. 2995], was erroneous.

2. Same.—An instruction that if defendants, or either of them, were negligent in any one or all of the particulars alleged in the declaration "or otherwise," and such negligence resulted in damage to plaintiffs, then the jury should find for plaintiffs against such negligent defendant, was erroneous, as authorizing the jury to find a verdict outside the issues.

3. Writ of Error—Instructions—Misdirection—Effect—Assumption of Prejudice.—Misdirection of the jury will be assumed to have resulted in prejudice to plaintiffs in error and require a reversal of the judgment, unless it plainly appears from the whole record that the error did not and could not have affected the verdict.

[Ed. Note.—For cases in point, see vol. 3, Cent. Dig. Appeal and Error, §§ 4038, 4043.]

4. Carriers—Injuries to Animals—Negligence—Instructions.—In an action for injuries to a shipment of horses, an instruction that where an injury or loss is caused by the concurrent negligence of plaintiff and defendant there can be no recovery, and if any damages were caused by a mistake of defendant's depot clerk in hearing plaintiff's telephone message, and plaintiff was negligent in undertaking to communicate with the railway depot by telephone, and such use of the telephone caused the mistake, there could be no recovery, was properly refused as misleading.

5. Writ of Error—Disposition of Case—Affirmance.—Where, in an action against connecting carriers for injuries to a shipment of horses no objection was made by plaintiffs nor by the initial carrier in the trial court to the rendition of judgment in favor of the delivering carrier, such judgment will be affirmed on a writ of error sued out by the initial carrier, as provided by Code 1904, § 3395, though the judgment against such initial carrier is reversed.

[Ed. Note.—For cases in point, see vol. 3, Cent. Dig. Appeal and Error, § 4563.]